

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CYMEYON HILL,

Plaintiff,

v.

A. SCOTLAND, et al.,

Defendants.

No. 2:21-cv-2382 KJM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a civil detainee proceeding pro se with a civil rights action under 42 U.S.C. §1983. Plaintiff alleges defendants violated his Fourteenth Amendment rights when they were deliberately indifferent to his serious mental health needs. On November 13, 2023, defendants filed a motion to dismiss. Pursuant to Local Rule 230(l), plaintiff's response to the motion was due within twenty-one days of service of the motion. After well more than twenty-one days had past, on February 2, 2024 this court gave plaintiff twenty-one days from the date of the order to file a response. (ECF No. 50.) Plaintiff was warned that if he failed to comply with the February 2 order by filing a timely response to defendants' motion, this court would recommend this case be dismissed for plaintiff's failure to comply with the local rules and with the court's order. See E.D. Cal. R. 183; Fed. R. Civ. P. 41.

Plaintiff filed a document in response to the February 2 order. In it, he states that he "does not accept this offer to contract by the above party or agent of the court." (ECF No. 51.) This

1 court is unable to determine what plaintiff is attempting to express in his filing. However,
2 plaintiff has not filed a response to the motion to dismiss as plaintiff was clearly directed to do in
3 the February 2 order. This court finds plaintiff's refusal to comply with the local rules and court
4 orders grounds for dismissal of this action.

5 This court also notes that plaintiff has been identified as a vexatious litigant. In Hill v.
6 Kaye, 1:22-cv-0929-JLT-HBK (E.D. Cal.), the district court affirmed the magistrate judge's
7 findings that plaintiff had filed a "panoply" of complaints in the federal district courts and that
8 many of those filings were dismissed as "repetitive, wholly insubstantial, conclusory, or frivolous
9 and consumed overburdened and limited judicial resources." The court in Hill v. Kaye further
10 found six cases in which plaintiff's in forma pauperis status was revoked because he had
11 misrepresented his financial condition in his applications to proceed in forma pauperis. Id. (Sept.
12 11, 2023 Findings and Recos. (ECF No. 65), adopted by Oct. 13, 2023 Order (ECF No. 69).) In
13 the present case, defendants' motion to dismiss is based on the contention that plaintiff similarly
14 misrepresented his financial condition in his application to proceed in forma pauperis. (See ECF
15 No. 48.) While this court does not make any findings here on defendants' motion, it takes into
16 account plaintiff's litigation history and identification as a vexatious litigant when recommending
17 dismissal of this action.

18 Accordingly, IT IS HEREBY RECOMMENDED that this case be dismissed for
19 plaintiff's failure to comply with the local rules and court orders.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
22 after being served with these findings and recommendations, either party may file written
23 objections with the court. The document should be captioned "Objections to Magistrate Judge's
24 Findings and Recommendations." The parties are advised that failure to file objections within the

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1 specified time may result in waiver of the right to appeal the district court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: March 12, 2024

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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